

Message Text

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42/45

ACTION XMB-07

INFO OCT-01 AF-10 ADP-00 EB-11 L-03 COME-00 TRSE-00

CIAE-00 INR-10 NSAE-00 RSC-01 RSR-01 /044 W

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P 091619Z AUG 73

FM AMEMBASSY LAGOS

TO SECSTATE WASHDC PRIORITY 583

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C O R R E C T E D C O P Y (TEXT)

E.O. 11652: N/A

TAGS: EFIN, NI

SUBJECT: EXIM CREDIT 2827

REF: (A) LAGOS 6251; (B) STATE 157053; (C) LAGOS

6160; (D) STATE 147260

1. WE HAVE RECEIVED FOR DELIVERY TO ABUBAKAR ALHAJI IN MINISTRY OF FINANCE JULY 30 LETTER FROM EXIM COUNSEL JOSEPH GAINER. LETTER INDICATES WILLINGNESS EXTEND AVAILABILITY OF EXIM CREDIT 2827 TO DECEMBER 31, 1973.

2. ATTACHED TO GAINER LETTER ARE COPIES OF "REVISED SUPPLEMENTARY AGREEMENT" REFLECTING EXTENSION OF AVAILABILITY AND REVISED PAYMENT SCHEDULE, AND GAINER LETTER REQUESTS ABULAKAR'S SIGNATURE TO THIS DOCUMENT.

3. GAINER LETTER ALSO CONTAINS PROVISIO TO EFFECT THAT REVISED SUPPLEMENTARY AGREEMENT SHOULD BE SIGNED AND RETURNED TO EXIM NOT LATER THAN AUGUST 15 AND THAT "ALL CONDITIONS PRECEDENT AS SET FORTH IN PARA 5 OF SUPPLEMENTARY AGREEMENT AND OUR LETTER OF JUNE 1, 1973 ARE DELIVERED BY THAT DATE," I.E., AUGUST 15.

4. CERTAIN CONFUSION SEEMS TO HAVE ARISEN IN THIS
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SITUATION AND WE NEED CLARIFICATION AND GUIDANCE AS

FOLLOWS:

A. WE ASSUME THAT REVISED SUPPLEMENTARY AGREEMENT ATTACHED GAINER LETTER IS SAME AS AMENDATORY AGREEMENT CITED REFTELS B AND D, AND THAT IT INCORPORATES REVISIONS PROPOSED IN THOSE REFTELS TO EARLIER AMENDATORY AGREEMENT THAT EXIM MAILED TO ABUBAKAR JUNE 1 (AND THAT ABUBAKAR REPORTEDLY DID NOT RECEIVE). ON BASIS THIS ASSUMPTION WE PLAN TO DISREGARD PARA 1 OF REFTEL B. PLEASE ADVISE IF THIS INCORRECT.

B. IN KEEPING PARA 2 OF REFTEL B WE PROPOSE TO OBTAIN ABUBAKAR'S SIGNATURE ON TWO COPIES OF REVISED SUPPLEMENTARY AGREEMENT ATTACHED GAINER LETTER (LEAVING THIRD COPY WITH MINISTRY OF FINANCE) AND RETURN THESE TWO COPIES TO EXIM. IF NECESSARY WE CAN PRODUCE TYPEWRITTEN TEXTS OF THIS REVISED SUPPLEMENTARY AGREEMENT BUT DO NOT PLAN TO DO SO UNLESS ASKED.

C. REFTEL D REFERS TO COMPLETION OF CONDITIONS PRECEDENT PRIOR TO AUGUST 15 BUT DOES NOT ENUMERATE THOSE CONDITIONS. IN GAINER LETTER REFERENCE TO CONDITIONS PRECEDENT STIPULATES THOSE CONDITIONS SET FORTH IN EXIM LETTER OF JUNE 1, 1973 AND IN PARA 5 OF REVISED SUPPLEMENTARY AGREEMENT; IN TURN, PARA 5 OF REVISED SUPPLEMENTARY AGREEMENT STIPULATES "SUCH OF THE CONDITIONS SPECIFIED IN ARTICLE IV OF THE ORIGINAL AGREEMENT AS EXIMBANK SHALL REQUIRE IN WRITING." WE SUPPOSE THAT EXIM'S LETTER OF JUNE 1 SET FORTH IN WRITING ITS REQUIREMENTS WITH REPECT TO CONDITIONS PRECEDENT (AS PROVIDED FOR IN PARA 5 OF REVISED SUPPLEMENTARY AGREEMENT) AND THAT ONE OF THOSE CONDITIONS IS EXECUTION OF PROMISSORY NOTE ATTACHED AS ANNEX A TO REVISED SUPPLEMENTARY AGREEMENT. HOWEVER, WE DO NOT HAVE EXIM LETTER OF JUNE 1 NOR DO WE HAVE ORIGINAL AGREEMENT MENTIONED IN PARA 5 OF REVISED SUPPLEMENTARY AGREEMENT (WE WOULD WELCOME COPY), AND IN AUGUST 3 CONVERSATION WITH US MINISTRY OF FINANCE DISCLAIMED KNOWLEDGE OF EXIM LETTER OF JUNE 1 (REFTEL A). WE WOULD LIKE TO HAVE CLARIFICATION OF CONDITIONS PRECEDENT EXIM REQUIRES LIMITED OFFICIAL USE

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AND GUIDANCE ON ACTION EMBASSY CAN TAKE TO ASSIST FMG IN MEETING THEM, INCLUDING EXECUTION OF PROMISSORY NOTE (OR NOTES). WE WOULD ALSO APPRECIATE KNOWING WHEN AND IN WHAT FORM CONDITIONS PRECEDENT WERE COMMUNICATED TO MINISTRY OF FINANCE, IF NOT IN JUNE 1 LETTER.

5. IN CIRCUMSTANCES OF THIS SITUATION, AUGUST 15 DEAD-

LINE STIPULATED BY EXIM SEEMS UNREALISTIC. WE MIGHT BE ABLE TO OBTAIN ABUBAKAR'S SIGNATURE TO REVISED SUPPLEMENTARY AGREEMENT BY THAT DATE, BUT WE THINK IT WOULD BE UNWISE AND PROBABLY COUNTER-PRODUCTIVE TO PROPOSE SIGNATURE TO HIM IF WE ARE NOT ABLE AT SAME TIME TO DEAL WITH QUESTIONS HE WILL ALMOST CERTAINLY RAISE ABOUT CONDITIONS PRECEDENT. DEPENDING ON NATURE OF CONDITIONS PRECEDENT, AUGUST 15 MAY BE IMPOSSIBLE DEADLINE AND IF THAT PROVES TO BE CASE, WE WOULD LIKE TO KNOW WHAT POSSIBILITIES ARE.

6. COMMENT: AT LEAST PART OF OUR DIFFICULTIES IN DEALING WITH MINFINANCE AND OTHER FMG AGENCIES ON EXIM LOANS ARISE BECAUSE WE HAVE ONLY PARTIAL INFORMATION. IT WOULD HELP GREATLY TO MINIMIZE THESE DIFFICULTIES, WHICH ALSO GIVE RISE TO UNNECESSARY FRICTIONS BETWEEN FMG AND USG, IF EXIM WOULD PROVIDE US REGULARLY WITH COPIES OF ITS COMMUNICATIONS AND AGREEMENTS, AND AS APPROPRIATE, COPIES OF COMMUNICATIONS FROM FMG.
REINHARDT

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BANK LOANS, LOAN AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 AUG 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973LAGOS06466
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: LAGOS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730848/aaaabjim.tel
Line Count: 135
Locator: TEXT ON-LINE
Office: ACTION XMB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) LAGOS 6251; (B) STATE 157053; (C,) LAGOS, 73 LAGOS 6251, 73 LAGOS 6160, 73 STATE 157053, 73 STATE 147260
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 10 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10-Jan-2002 by martinjw>; APPROVED <31-Jan-2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXIM CREDIT 2827
TAGS: EFIN, NI, US, XMB, (ALHAJI, ABUBAKAR)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005